INDEX

CITATIONS

Cases:	Page
Blanton v. *United States*, 17 F. Supp. 327	10
Bono v. *United States*, 113 F. 2d 724	10
Brady v. *Roosevelt S. S. Co.*, 317 U. S. 575	2
Fox v. *Alcoa Steamship Co.*, 143 F. 2d 667, certiorari denied, 323 U. S. 788	9
Griffin v. *United States*, 60 F. 2d 339	10
United States v. *Sherwood*, 312 U. S. 584	9
Statutes:	
Federal Employees' Compensation Act, 39 Stat. 742 (5 U. S. C. 751 *et seq.*)	7
Jones Act, Sec. 33, 41 Stat. 1007 (46 U. S. C. 688)	2
Public Law 17, enacted March 24, 1943, 57 Stat. 45 (50 U. S. C. App., Supp. IV, 1291)	1, 2, 8
Suits in Admiralty Act, 41 Stat. 525 (46 U. S. C. 741 *et seq.*)	9
Miscellaneous:	
Compilation of Standard Contract Forms of the War Shipping Administration (compiled by the House Merchant Marine and Fisheries Committee, Document No. 4)	6
Executive Order No. 9054 of February 7, 1942, 7 F. R. 837	5
Hearings before the House Ways and Means Committee on H. R. 3736, 79th Cong., 1st sess.	4, 7, 9
H. Rep. No. 107 78th Cong., 1st sess.	5, 6, 8, 9, 12, 13
Issues in Social Security, Report to Ways and Means Committee of House of Representatives by the Committee's Social Security Technical Staff, pursuant to H. Res. 204, 79th Cong., 1st sess.	9
S. Rep. No. 62, 78th Cong., 1st sess.	8, 9
United States Employees' Compensation Commission, 28th Annual Report, p. 5	7
War Shipping Administration, General Order No. 32, 8 F. R. 5414	9

689072—46——1

In the Supreme Court of the United States

OCTOBER TERM, 1945

No. 625

CECIL I. HUST, PETITIONER

v.

MOORE-MCCORMACK LINES, INC.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF OREGON

MEMORANDUM FOR THE UNITED STATES AS AMICUS CURIAE

The United States files this memorandum *amicus curiae* because of the importance of the question presented in the administration of government-owned shipping, both retroactively during the war just ended and prospectively during the further operation of such shipping. The War Shipping Administration has requested the Attorney General to advise the Court of the Government's interest and position with regard to the problem.

As will appear, Public Law 17, enacted March 24, 1943 (57 Stat. 45, 50 U. S. C. App., Supp. IV, 1291) is a specific enactment covering, among

other things, liability for injuries sustained by merchant seamen on government-owned vessels.[1] Although the injury to petitioner occurred before the adoption of Public Law 17, that Act is pertinent because it is declaratory of the previously understood law and practice with respect to the incidence of liability for injuries, and the decision in the present case will probably determine whether similar suits can be maintained with reference to the subsequent period as well as the period before the Act. Congress recognized and intended, we believe, that liability in cases like the present should fall upon the United States and not upon steamship companies which, like respondent, are general agents of the United States in connection with the operation of vessels. It is the position of the Government, therefore, that petitioner was an employee of the United States and that respondent is not liable as his employer. No question of possible liability of the respondent as agent for an independent tort growing out of its own negligence (Cf. *Brady* v. *Roosevelt S. S. Co.*, 317 U. S. 575, 581, 582) is presented (see the opinion of the court below at R. 32–33, 37), since the action was brought under Section 33 of the Jones Act (41 Stat. 1007, 46 U. S. C. 688) against the alleged employer as such (R. 5, 14).

[1] Certain vessels have been operated during the war period under time charters by their owners to the War Shipping Administration. No question of liability to seamen employed on such vessels is here presented.

The S. S. Mark Hanna, upon which petitioner was injured, was a liberty ship owned by the United States and operated through the War Shipping Administration. The experience and facilities of Moore-McCormack were utilized in connection with the operation of the ship by means of a standard general agency agreement which specifically provided, as emphasized by respondent herein (Br. 5) and by the court below (R. 15), that the master of the vessel should be the agent and employee of the United States and that the crew should be employed by the master (R. 151). Petitioner was so employed (R. 142).

As of V-J Day, approximately 4,300 merchant ships were operated by the War Shipping Administration, as compared with the pre-war American merchant marine available for deep-sea service of 1,375 vessels.[2] At the close of the war, approximately 220,000 men were needed for the merchant marine as compared with the pre-war requirement of 55,000 officers and men for off-shore commerce.[3] On and after April 19, 1942, the United States, through the War Shipping Administration, was the owner or bareboat charterer of the vast bulk

[2] This expansion, despite war losses, is more than accounted for by the Maritime Commission's wartime ship construction of 5,220 ships. The title to these ships vested, of course, in the United States and their effective operation was the main objective of the general agency scheme.

[3] Under various statutory powers, the War Shipping Administration's Training Organization trained and sent to sea more than 168,000 men between Pearl Harbor and V-J Day.

of these merchant ships, which it operated under general agency agreements similar to that in this case, and considered itself the employer of the merchant seamen engaged in their operation.[4] Thus, the question of the status of merchant seamen in the most important category of wartime merchant fleet operation for purposes of recovery for personal injury is here presented for decision.

Early in 1941, the United States Maritime Commission began the development of a shipping pool for use in carrying critical and strategic materials needed for national defense. Initially, participation in the shipping pool was voluntary on the part of ship owners, and the employment relation between ship owners and seamen was in no way disturbed. After December 7, 1941, an effort was made to harness merchant shipping closely to war operations by means of contracts. It became apparent, however, in view of the critical role played by transportation, that central control of the American merchant marine and complete coordination of its activities were vital.

[4] Figures supplied by the United States Maritime Commission to the social security technical staff of the Committee on Ways and Means of the House of Representatives show that as of June, 1945, 146,460 individuals were engaged in maritime employment in connection with general agency agreements of the War Shipping Administration, out of a total of 173,060 employees on American-flag vessels. See Hearings before the Committee on H. R. 3736, 79th Cong., 1st sess., p. 703.

A single fluid pool of shipping was needed to permit maximum flexibility and efficiency in the assignment of ships and the allocation of vessel space.[5] Accordingly, on April 19, 1942, the Administrator of War Shipping gave notice of general requisition of all ocean-going vessels.[6] As the result of this general requisition and the maritime war construction program, the War Shipping Administration, after that date, was the owner or bareboat charterer of the vast majority of ships operated in the American merchant marine. Ultimate control, flexibility and uniformity were achieved by the Government's status as owner or bareboat charterer. By means of general agency agreements, identical with that here involved, the War Shipping Administration was able to utilize, under its active supervision and direction, existing facilities of the experienced steamship companies.[7]

---

[5] H. Rep. No. 107, 78th Cong., 1st sess., pp. 12–13.

[6] Executive Order No. 9054 of February 7, 1942, 7 F. R. 837, created the War Shipping Administration and delegated to the Administrator the power to coordinate, manage, and control the operation, purchase, charter, requisition and use of the ocean-going transportation facilities of the nation for the purposes stated in the text.

[7] The development of adequate shipping experience and facilities was a major purpose of the pre-war program for developing and expanding the American merchant marine, and the wartime utilization of such facilities by the War Shipping Administration in connection with the wartime operation of the merchant fleet was specifically commended in Congress. H. Rep. 107, 78th Cong., 1st Sess., p. 14.

Although this utilization of private steamship companies necessarily required the exercise of discretion by them as agents for many day-to-day purposes, the position of the Government as employer was explicitly recognized and its responsibilities as such were fully assumed, both generally and in relation to liability for personal injuries. It is this practical functioning of the arrangement, permitting "* * * a quick change-over from peacetime to wartime operations of the entire merchant marine without any substantial loss of efficiency or impairment of morale * * *" (H. Rep. No. 107, *supra*, p. 5), upon which petitioner seeks to base his contention that he can maintain a Jones Act suit as an employee of the respondent. This contention, however, conflicts with the terms of the shipping articles which he signed (R. 17, 142), with the applicable provisions of the general agency agreement (see *supra*, p. 3), and with the clear understanding and purpose of Congress and of the War Shipping Administration.

All general agency agreements, of which the one here involved is typical, charters, policies, operations regulations and directives to general agents, contracts, and insurance and other arrangements used by the War Shipping Administration were drafted and executed on the basis that merchant seamen of the class represented by the petitioner

herein were employees of the United States.[8] Other government agencies have regarded these crew members as employees of the United States. For example, the United States Employees' Compensation Commission granted benefits to seamen of this class under the Employees' Compensation Act (39 Stat. 742, 5 U. S. C. 751 *et seq.*) in cases arising prior to the Act of March 24, 1943, *supra*. See the Commission's 28th Annual Report (1944), p. 5. The authorities of a number of States which provide coverage for maritime workers in their unemployment compensation laws have refrained from collecting contributions with respect to workers on vessels operated by the War Shipping Administration through general agents, since "it is generally understood that * * * [such] workers * * * are considered to be Federal employees." Op. cit. *supra*, n. 4, pp. 703–705. If petitioner's contention is sustained, the Govern-

[8] Standard forms of the contracts, charters, and insurance arrangements are contained in a *Compilation of Standard Contract Forms of the War Shipping Administration*, compiled by the Merchant Marine and Fisheries Committee of the House of Representatives (Document No. 4). Also important in this connection is a Statement of Policy executed on May 4, 1942, by the War Shipping Administration and a number of maritime unions, including the one to which petitioner belonged (see R. 24), covering certain aspects of maritime labor relations during the war period, in which it is stated that the intention of the general agency agreement clause covering the hiring of crew members "is that the General Agent will procure and make available to the Master for engagement by the Master, officers and men * * *" (R. 167).

ment will be faced with the question whether contributions should be made to such state funds retroactively for the period of the war, as well as prospectively.

Public Law 17 of March 24, 1943 (see *supra*, p. 1) provides (§ 1, 50 U. S. C., App. Supp. IV, 1291) that "officers and members of crew * * * employed on United States or foreign flag vessels as employees of the United States through the War Shipping Administration * * * shall not be considered as officers or employees of the United States for the purposes of the United States Employees Compensation Act," but that their claims for personal injury or death "shall, if administratively disallowed in whole or in part, be enforced pursuant to the provisions of the Suits in Admiralty Act * * *." There can be no doubt that as to such suits for personal injuries to seamen on merchant vessels "owned by or bareboat-chartered to the War Shipping Administration" the Act was viewed as declaratory of pre-existing law. (S. Rep. No. 62, 78th Cong., 1sf sess., p. 5; see also *idem*. p. 11; H. Rep. No. 107, 78th Cong., 1st sess., pp. 2, 16.) A complete survey and approval of the War Shipping Administration's operation of the bulk of the merchant fleet is contained in the cited committee reports. The reports leave no doubt that the status of merchant seamen, such as petitioner, as employees of the United States is recognized.

H. Rep. No. 107, *supra*, pp. 2, 15 ff., 22–24; S. Rep. No. 62, *supra*, pp. 5–6.[9]

In respect to personal injury and death claims the over-all purpose of the legislation is stated to be to confirm the rights of these seamen on the same basis as seamen in private employment. H. Rep. No. 107, *supra*, pp. 2–3, 15, 20; S. Rep. No. 62, *supra*, pp. 5–6, 11. However, provision is made that suits to enforce such rights, being against the United States, shall be brought under the Suits in Admiralty Act (41 Stat. 525, 46 U. S. C. 741 *et seq.*), and the right to institute such suits is conditioned on prior administrative consideration and disallowance of claims in accordance with regulations prescribed by the War Shipping Administrator.[10] See § 1, quoted *supra*, and the further provision that "'administratively disallowed' means a denial of a written claim in accordance with rules or regulations prescribed by the Administrator * * *." Compare *Fox v. Alcoa Steamship Co.*, 143 F. 2d 667 (C. C. A. 5), certiorari denied, 323 U. S. 788; *United States* v.

[9] Recent congressional recognition of the status, as employees of the United States, of merchant seamen such as petitioner is contained in *Issues in Social Security*, Report to the Ways and Means Committee of the House of Representatives by the Committee's Social Security Technical Staff pursuant to H. Res. 204, 79th Cong., 1st Sess., p. 401; Hearings before Ways and Means Committee, on H. R. 3736, 79th Cong., 1st Sess., p. 704.

[10] Such rules and regulations are embodied in General Order No. 32, 8 F. R. 5414.

Sherwood, 312 U. S. 584; *Bono* v. *United States*, 113 F. 2d 724 (C. C. A. 2); *Griffin* v. *United States*, 60 F. 2d 339 (C. C. A. 7); *Blanton* v. *United States*, 17 F. Supp. 327, 328 (S. D. Ala.). These remedies were clearly regarded as exclusive. See H. Rep. No. 107, at p. 21: "The only modification [of seamen's rights on government as compared with private vessels] arises from the remedial provision that they shall be enforced in accordance with the provisions of the Suits in Admiralty Act. This procedure is appropriate in view of the fact that the suits will be against the Government of the United States." To permit the alternative remedy of suit against a general agent would go counter to the legislative understanding and purpose and, as to the period subsequent to the adoption of Public Law 17, would circumvent the requirement of prior administrative consideration which the statute imposes.

Even prior to the statute, the War Shipping Administrator had taken substantial steps to insure to merchant seamen who were employees of the United States their pre-existing rights insofar as the basis of such rights was compatible with their status as government employees and with the requirements of the wartime operation of the merchant marine. In devising a program to accomplish its objectives, the War Shipping Administration, after its creation on February 7, 1942, kept definitely in view the fact that American merchant seamen are civilians, engaged

in voluntary contractual employment, and that the operation of the merchant marine, however vital and closely allied to the military and naval activities, was to be conducted as a civilian enterprise. The handling of collective bargaining, here brought in issue by petitioner's reference to decisions of the National Labor Relations Board (interim or examiner's report) and the War Labor Board, illustrates such efforts.

Wages and working conditions of a majority of merchant seamen privately employed on dry cargo vessels had been established by collective bargaining agreements between ship owners and maritime labor organizations. As vessels owned by or bareboat chartered to the Government appeared in increasing numbers beside privately owned and operated ships, the War Shipping Administrator considered that existing wages, working conditions, and employment contracts established by collective bargaining for the privately owned vessels should obtain as to government vessels operated under the general agency scheme. This was the intended effect of certain Statements of Policy signed by the Administrator and nine maritime unions in May and June, 1942 (see *supra,* n. 8), to which both petitioner and respondent herein have referred.[11] These State-

[11] The War Shipping Administration has taken the position that these Statements of Policy constituted approval of all maritime collective bargaining agreements, not merely those of signatory unions.

ments of Policy were promptly implemented by a series of policies, regulations and directives, so that uniformity should be achieved.

One aspect of the labor relations problem involved the designation of bargaining units. To meet this problem, an exchange of correspondence (printed in the Appendix, *infra,* pp. 15–36) took place between the War Shipping Administration and the National Labor Relations Board, whereby the Administrator exercised his power to utilize the facilities of the National Labor Relations Board for the designation of bargaining units. The War Shipping Administration's rights with respect to the Board's possible jurisdiction over personnel aboard vessels owned by or bareboat chartered to the War Shipping Administration were specifically reserved. (See *infra,* pp. 19, 21, 23, 26, 29.) These solutions of the collective bargaining problem were specifically considered and approved by Congress in connection with its consideration of the Act of March 24, 1943, *supra.* H. Rep. No. 107, *supra,* pp. 15–17, 23–24.[12] A similar practical arrangement was made in connection

[12] The participation of the War Shipping Administrator, as a signatory of the Statement of Principles, in the activities of the Maritime War Emergency Board in connection with questions of special compensation and bonuses for merchant seamen, was also noted and approved by Congress. H. Rep. No. 107, *supra,* at p. 17. The Maritime War Emergency Board was established on December 18, 1941, by agreement of private ship operators and maritime labor organiza-

with the functioning of the National War Labor Board.

The material set forth above serves to illustrate the complex nature of the vital operation in which the War Shipping Administration has been engaged and the practical solutions which have been given to the problems which that Administration faced as it "* * * actively engaged in operating * * * the largest merchant marine in the world's history. * * *" H. Rep. No. 107, *supra*, at p. 12. At all times during this operation, the legal relationship of employer and employee between the United States and merchant seamen of the class represented by petitioner has been specifically maintained.

Petitioner is deprived of no substantial right by being required to vindicate his claim in a Jones Act suit against the United States under the Suits in Admiralty Act rather than in a suit against the general agent. The problem presented has been given exceedingly careful consideration by the

---

tions to deal with problems of war compensation and bonus problems which could no longer be adequately solved by the parties because of the lack of current, accurate information. The memorandum of agreement was designated "Statement of Principles." The War Shipping Administration became the signatory when it began to operate a substantial portion of the merchant fleet. It should be noted that the War Labor Board advised the Maritime Emergency Board that its bonus decisions need not be submitted to the former agency for stabilization review.

Supreme Court of Oregon, and we respectfully submit that its judgment should be affirmed.

J. HOWARD MCGRATH,
Solicitor General.
JOHN F. SONNETT,
Assistant Attorney General.
RALPH F. FUCHS,
Special Assistant to the Attorney General.
PAUL A. SWEENEY,
SAMUEL D. SLADE,
Attorneys.

APRIL 1946.

APPENDIX

The correspondence between the War Shipping Administration and the National Labor Relations Board, referred to above at p. 12 is as follows:

WAR SHIPPING ADMINISTRATION,
Washington 25, D. C., October 20, 1942.

NATIONAL LABOR RELATIONS BOARD,
Washington, D. C.

GENTLEMEN: As you know, one or two cases recently have arisen in which maritime labor unions have sought to invoke the jurisdiction of your Board under the National Labor Relations Act in matters involving either in whole or in part personnel employed on vessels owned by or under bareboat charter to the War Shipping Administration. Similar matters may arise in the future.

As you are undoubtedly aware, the War Shipping Administration, on April 8, 1942, requisitioned substantially all of the vessels in the American Merchant Marine with certain minor exceptions. These vessels are in addition to the substantial number of vessels constructed and owned by the government. The vessels requisitioned fall into two classes: (1) those requisitioned under bareboat charters which place the War Shipping Administration in substantially the same status as with respect to other vessels owned outright by the government, and (2) those

requisitioned under time charters. All vessels owned or requisitioned under bareboat or time charter basis by the War Shipping Administration have been assigned to various steamship companies for operation under agency agreements. Those vessels owned by or bareboat chartered to the War Shipping Administration are operated by steamship companies under what is known as a General Agency Agreement. Those vessels which are under time charter are operated by various steamship companies under what is known as a Time Charter Agency Agreement. While the charter and agency agreements of the nature mentioned are not uniform in all details, they are substantially the same with respect to the provisions governing the subjects discussed in this letter.

For your more complete information there is attached a copy each of our Requisition Bareboat Charter for Cargo and Tank Vessels, Requisition Time Charter for Dry Cargo Vessels, Requisition Time Charter for Tank Vessels, General Agency Agreement (applicable to the operation of vessels owned by or bareboat chartered to the War Shipping Administration), and our Time Charter Agency Agreement (applicable to the operation of vessels under time charter to the War Shipping Administration).

It will be noted that under Clause 1 of Part II of both forms of time charters mentioned above, the owner is required to deliver the vessel to the charterer with a "Master and a full complement of officers and crew." Under Clause 6 it is provided that the owner shall provide and pay for "wages of * * * and other expenses pertain-

ing to, the Master, officers and crew (except as herein otherwise provided)." It should also be noted that by virtue of Article 3A (c) of the Time Charter Agency Agreement the agent is required to provide and pay for various expenses "except those pertaining to the Master, officers and crew." Under the arrangement provided for by these time charter and time charter agency agreements, as illustrated by the aforementioned provisions, the Master, officers and crew members of vessels time chartered to the War Shipping Administration are employees of the owner and not the charterer.

A different situation exists in regard to personnel employed aboard vessels owned by or bareboat chartered to the War Shipping Administration. In this connection we wish to call your attention to the provisions in Clause 14 of Part II of the Bareboat Charter for Cargo and Tank Vessels mentioned above which reads as follows:

> During the period hereof, the Charterer shall at its own expense, or by its own procurement, man, victual, navigate, operate, supply, fuel and repair the Vessel and pay all charges and expenses of every kind and nature whatsoever incident thereto. The Charterer and not the Owner shall have exclusive possession, control and command of said Vessel during the entire period of this Charter.

It should also be noted that under Article 1 of the General Agency Agreement, under which vessels owned by or bareboat chartered to the War Shiping Administration are operated, the general agent acts as the agent of the United States and not as an independent contractor in the management and conducting of the business of the vessels

assigned to it by the United States. The following provisions contained in Article III–A (d) are also called specifically to your attention:

> * * * The Master shall be an agent and employee of the United States, and shall have and exercise full control, responsibility and authority with respect to the navigation and management of the vessel. The General Agent shall procure and make available to the Master for engagement by him the officers and men required by him to fill the complement of the vessel. * * * The officers and members of the crew shall be subject only to the orders of the Master. All such persons shall be paid in the customary manner with funds provided by the United States hereunder.

Under Article 7 provision is made for the reimbursement of the general agent by the United States for all crew expenditures, including disbursements for or on account of wages, extra compensation, overtime, bonuses, penalties, subsistence, repatriation, travel expense, loss of personal effects, maintenance, cure, vacation allowances, damages or compensation for death or personal injury or illness, insurance premiums, payments under any applicable pension fund, Social Securitity Taxes, etc.

The War Shipping Administrator has been advised that under the contractual arrangements mentioned above and for other reasons, the Master, officers and members of the crew of all vessels owned by or bareboat chartered to the War Shipping Administration are employees of the United States and particularly of the War Shipping Administration, and are so consid-

ered and treated at the present time by other governmental departments and agencies for the purposes of the Civil Service Retirement Act, the United States Employees' Compensation Act, the Federal Social Security Laws, and the Federal Employment Tax laws. Furthermore, the wages of such personnel are exempt from attachment as government employees. The War Shipping Administrator has also been advised that Section 2 of the National Labor Relations Act provides that the term "employer" shall not include the United States.

Under these circumstances, the War Shipping Administration cannot take a position that the National Labor Relations Board has jurisdiction under the National Labor Relations Act of the personnel aboard vessels owned by or bareboat chartered to the War Shipping Administration, and it is assumed that your Board, for like reasons, will not assert jurisdiction over these employees.

We are fully cognizant, however, of the services that your Board can render out of the abundance of your experience and trained staff in the solution of personnel problems which, except for the circumstances mentioned above, would ordinarily fall within the scope of the National Labor Relations Act. We are also generally advised of the satisfactory working arrangements which have been agreed upon between your Board and the War and Navy Departments under circumstances which, to some extent, may be analogous to those above described.

Enclosed for your further information is a copy of the Executive Order of the President dated

February 7, 1942, establishing the War Shipping Administration. Paragraph 5 of the Executive Order reads as follows:

> For the purpose of carrying out the provisions of this Order, the Administrator is authorized to utilize the services of available and appropriate personnel of the United States Maritime Commission, the War and Navy Departments, the Bureau of Marine Inspection and Navigation of the Department of Commerce, and other government departments and agencies which are engaged in activities related to the operation of shipping.

Paragraph 8 of the same Order reads in part as follows:

> * * * The Administrator may exercise the powers, authority and discretion conferred upon him by this Order through such officials or agencies and in such a manner as he may determine.

The War Shipping Administration is desirous of adopting the most feasible and practicable method of dealing with problems which may arise and relate to the personnel of vessels owned by or bareboat chartered to it. As an illustration of what has already been done in this respect, copies of Statements of Policy entered into between the War Shipping Administration and the various maritime unions are also enclosed.

By virtue of the authority granted under the provisions of the Executive Order quoted above, the Administrator may utilize in behalf of the War Shipping Administration the advice, services and assistance which may be furnished by other

appropriate governmental departments and agencies to the end that the operations of vessels by the War Shipping Administration may be conducted at maximum efficiency and without interference and interruptions which might otherwise occur. For these reasons the value of the advice and assistance of the National Labor Relations Board is recognized in matters relating to the designation of collective bargaining representatives, and to such other problems falling within the scope of the National Labor Relations Act as the War Shipping Administration may determine such advice and assistance is required. Of course, if your Board sees fit to furnish this advice and assistance to the War Shipping Administration, it should be understood that in the state of its advice the War Shipping Administration is compelled not to recognize that the National Labor Relations Board has jurisdiction over employees of the War Shipping Administration and that this question shall be reserved for future determination and adjudication in the event it should ever become pertinent and material in any proceeding or case.

As a means of obtaining a satisfactory arrangement for the adjustment of problems arising during the war emergency, I suggest the following arrangement be entered into:

1. The National Labor Relations Board, in its customary manner, will conduct elections and otherwise act in the designation of collective bargaining representatives and in the adjustment of other problems which may involve personnel of vessels owned by or under bareboat charter to the War Shipping Administration.

2. The War Shipping Administration will be given notice of all proceedings which are instituted with the Board affecting our personnel or operating agents. Whenever a petition for certification of representatives under Section 9 (c) of the National Labor Relations Act is instituted, and whenever a charge alleging the commission of an unfair labor practice under that Act is filed, the Regional Director of your Board, in addition to notifying our operating agent immediately concerned, will also send a copy of such notification to the War Shipping Administration, Washington, D. C. The War Shipping Administration will likewise instruct all of its operating agents to give us a similar notice whenever a petition or charge of this nature has been filed. The Regional Directors of your Board will likewise transmit to us copies of complaints and petitions in proceedings commenced under the National Labor Relations Act which involve any of our operating agents.

3. The War Shipping Administraion will be placed in a position to contribute facts, some of which may be of a confidential or secret nature, which are relative to the Board's consideration of a case or proceeding under the suggested arrangement.

4. A close liaison shall be maintained between the National Labor Relations Board and the War Shipping Administration in connection with activities of your Board and the War Shipping Administration under this arrangement including conferences relating to the problem of a formula whereby determinations of collective bargaining agents will not be made until a truly representa-

tive number of vessels are assigned to our respective operating agents and a correspondingly representative number of personnel are engaged aboard such vessels, and whereby the status of collective bargaining agents, once determined, shall not be subject to too frequent challenge or change so as to interfere with the proper and efficient operation of vessels in the furtherance of the war effort.

5. The War Shipping Administration under this arrangement shall be considered as having reserved its rights with respect to the jurisdiction of the Board over personnel aboard vessels owned by or bareboat chartered to the War Shipping Administration.

Sincerely yours,

(Sgd.) E. S. Land,
E. S. LAND,
Administrator.

NATIONAL LABOR RELATIONS BOARD,
Washington, D. C. October 26, 1942.

Admiral E. S. LAND,
Administrator,
War Shipping Administration,
Washington, D. C.

DEAR SIR: The Board has considered your letter of October 20, 1942 and is most anxious to cooperate with the War Shipping Administration in a wholehearted mutual endeavor to adjust problems within the jurisdiction of the Board incident to personnel in the Merchant Marine. To that end the Board would welcome an understanding with the War Shipping Administration whereby on the one hand the Board would ad-

minister and apply the National Labor Relations Act to seamen aboard merchant vessels irrespective of the types of charter or agreement under which such vessels operate and, on the other hand, with the understanding that the War Shipping Administration wishes to reserve the legal question whether the Board has jurisdiction with respect to personnel aboard vessels owned by or bareboat chartered to the War Shipping Administration.

The Board is advised by its counsel that no final determination is possible at the present time concerning the jurisdiction of the Board with respect to such personnel. It would appear that so vital a question could not ultimately and decisively be determined in the absence of a full hearing in which the employees, the operators and the War Shipping Administration could present evidence upon which the Board and the courts could make such a determination.

Nevertheless, the Board is deeply aware of the need for prompt and effective disposition of problems arising in the field of labor relations during the war emergency. Hence, the Board feels that to the extent that litigation can be avoided, the objectives of all would be best served.

As a means of obtaining a satisfactory arrangement for the adjustment of problems arising during the war emergency, the National Labor Relations Board will enter into the following arrangement with the War Shipping Administration:

1. The Board, in its customary manner, will conduct elections and otherwise act in the designation of collective bargaining representatives

and in the adjustment of other problems which may involve personnel of vessels owned by or under bareboat charter to the War Shipping Administration.

2. The War Shipping Administration will be given notice of all proceedings which are instituted with the Board affecting the personnel of vessels owned by or under bareboat charter to the War Shipping Administration. Whenever a petition for certification of representatives under Section 9 (c) of the National Labor Relations Act is instituted, and whenever a charge alleging the commission of an unfair labor practice under that Act is filed, the Regional Directors of the Board, in addition to notifying the operating agent immediately concerned, will also send a copy of such notification to the War Shipping Administration, Washington, D. C. The War Shipping Administration will likewise instruct all of its operating agents to notify it whenever a petition or charge of this nature has been filed. The Regional Directors of the Board will likewise transmit to the War Shipping Administration copies of complaints and petitions in proceedings commenced under the National Labor Relations Act which involve any of the operating agents.

3. The War Shipping Administration will be in a position to contribute facts, some of which may be of a confidential or secret nature, which are relative to the Board's consideration of a case or proceeding under the suggested arrangement.

4. A close liaison shall be maintained between the National Labor Relations Board and the War Shipping Administration in connection with activities of the Board and the War Shipping Ad-

ministration under this arrangement, including conferences relating to the problem of a formula whereby determinations of collective bargaining agents will not be made until a truly representative number of vessels are assigned to your respective operating agents and a correspondingly representative number of personnel are engaged aboard such vessels, and whereby the status of collective bargaining agents, once determined, shall not be subject to too frequent challenge or change so as to interfere with the proper and efficient operation of vessels in the furtherance of the war effort.

In the conclusion, the National Labor Relations Board understands that the War Shipping Administration under this arrangement shall be considered as having reserved its rights with respect to the jurisdiction of the Board over personnel aboard vessels owned by or bareboat chartered to the War Shipping Administration.

Sincerely yours,

(Sgd.) H. A. Millis,
H. A. Millis.

War Shipping Administration,
Washington 25, D. C., March 30, 1943.

National Labor Relations Board,
Washington, D. C.

Gentlemen: Reference is made to the exchange of correspondence between the National Labor Relations Board and the War Shipping Administration, copies of which are attached.

The War Shipping Administration is advised that some questions have arisen in relation to elections being conducted by your Board on ves-

sels operated by General Agents of the War Shipping Administration. In some instances, the General Agent may operate vessels only under time charter; in other instances, the General Agent may operate vessels only under bareboat charter or general agency agreement; and in still other cases, the General Agent may engage in both types of operations, that is, he may operate vessels both under time charter and also under bareboat charter and general agency agreement. In this last mentioned type of operation, employees who had been originally employed by the General Agent prior to the requisition may find themselves employed on bareboat chartered or government-owned vessels; and new employees may find themselves indiscriminately employed on vessels operated under both types of charter or general agency agreement.

The controlling purpose of the exchange of correspondence between the National Labor Relations Board and the War Shipping Administration was to utilize, in the successful operation of the American Merchant Marine by the War Shipping Administration, the experience and trained personnel of the National Labor Relations Board in the field of its customary jurisdiction. What is the unit appropriate for the purposes of collective bargaining in such a matter. The War Shipping Administration therefore expresses no views as to what the appropriate unit is or how these elections shall be conducted beyond stating that the War Shipping Administration has no objection if the National Labor Relations Board should conclude to treat all of the personnel under the immediate direction of a general agent as an

appropriate unit, irrespective of the form of charter arrangement, and irrespective of conclusions whether a given employee is employed by the War Shipping Administration or the operator.

Sincerely yours,

(Sgd.) E. S. Land,
E. S. LAND,
Administrator.

NATIONAL LABOR RELATIONS BOARD,
Washington, D. C., September 14, 1943.

Admiral E. S. LAND,
Administrator,
War Shipping Administration,
Washington, D. C.

Re: *American-Hawaiian Steamship Company,* Case No. R–3688.

DEAR SIR: Reference is made to your letter of October 20, 1942, and the reply of the National Labor Relations Board dated October 26, 1942, relating to the exercise by the National Labor Relations Board of jurisdiction over personnel aboard vessels owned by or bare-boat chartered to the War Shipping Administration.

The proceeding referred to above is pending before the Board on a petition for investigation and certification of representatives for employees of American-Hawaiian Steamship Company. The case squarely presents the legal question whether the National Labor Relations Board has jurisdiction with respect to personnel aboard vessels owned by or bare-boat chartered to the War Shipping Administration and which the aforesaid

Company has been assigned for operation and servicing pursuant to the general agency agreement with the War Shipping Administration. The Company has taken the position that personnel aboard such vessels are employees of the United States, and that in consequence the National Labor Relations Board has no jurisdiction under the National Labor Relations Act. For the formal record in this proceeding, the National Labor Relations Board requests that the War Shipping Administration state whether or not the personnel involved in the instant case are regarded by the War Shipping Administration as employees of the United States.

Sincerely yours,

(Sgd.) H. A. Millis.
HARRY A. MILLIS.

WAR SHIPPING ADMINISTRATION,
Washington 25, D. C., November 9, 1943.

NATIONAL LABOR RELATIONS BOARD,
Washington, D. C.

GENTLEMEN: This acknowledges your letter of September 14, 1943, concerning the American-Hawaiian Steamship Company, your Case No. R-3688, in which the National Labor Relations Board requests that the War Shipping Administration state whether or not the personnel involved are regarded by the War Shipping Administration as employees of the United States.

The desirability of reserving this question, without interruption or interference with the processes of the National Labor Relations Board, was the basis of our exchanges of correspondence, copies of which are attached.

At the outset, I should like to make it clear that the War Shipping Administration considers this arrangement to be most helpful, and hopes that it may be continued. Moreover, from the standpoint of the War Shipping Administration, action by the National Labor Relations Board, in accordance with its usual procedures, for the settlement of whatever difference may exist between American-Hawaiian Steamship Company and the personnel employed on board vessels owned by or bareboat chartered to the Administration and operated by the Company as agent for the Administration, would be in conformity with the arrangement referred to. Also such action by the Board would appear to be in conformity with its decisions in the cases of the Cosmopolitan Shipping Company, Inc., 2 N. L. R. B. 759, America France Line et al., 3 N. L. R. B. 64, and Southgate Nelson Corporation, 3 N. L. R. B. 535.

Your letter of September 14, 1943, however, asks for a statement as to whether the personnel involved in this proceeding are regarded by the War Shipping Administration as employees of the United States. In this connection, we are in agreement with the statement in your letter of October 26, 1942 as follows:

> It would appear that so vital a question could not ultimately and decisively be determined in the absence of a full hearing in which the employees, the operators and the War Shipping Administration could present evidence upon which the Board and the courts could make such a determination.

Therefore, instead of attempting to state legal conclusions, we submit such facts as are known

by the War Shipping Administration to have a bearing on the problem in addition to those outlined in our prior exchanges of correspondence.

The Executive Order creating the War Shipping Administration contemplates the operation of the American Merchant Marine as a civilian enterprise. In the exercise of its various functions and in the conduct of its activities, the War Shipping Administration in general is authorized to operate with the powers of a business or a commercial organization under the provisions of the Merchant Marine Act of 1936. These activities are so broad and the need for emergency action has been so great that the Administrator cannot function with the usual restrictions applicable to government agencies.

At the time of our letter of October 20, 1942, and as stated therein, we were advised that the personnel in question were employees of the United States and were then so considered and treated by other governmental departments and agencies for the purposes of the Civil Service Retirement Act, the United States Employees Compensation Act, the Federal Social Security Laws, and the Federal Employment Tax Laws.

Shortly after that time, the problem of the status of merchant seamen employed on vessels owned by or bareboat chartered to the War Shipping Administration was submitted to the Congress in connection with H. R. 133, 78th Congress. This bill as enacted (Public Law 17, 78th Congress, approved March 24, 1943) put all merchant seamen on the same basis as seamen in private employment with respect to: (1) the right to wages, maintenance and cure, in case of illness or

injury in the ship's service; (2) the right to the benefits of the Public Health Service, including Marine Hospitals; (3) old age and survivors' insurance under the Social Security Act; (4) the right to indemnity through court action for injury resulting from unseaworthiness of the vessel or defects in vessel appliances; (5) the right to action under the Jones Act for injury or death resulting from negligence of the employer; (6) the right to enforce claims for these benefits according to the procedure of the Suits in Admiralty Act, except that claims with respect to Social Security benefits shall be prosecuted in accordance with the procedure provided in the Social Security Law; (7) the protection of war risk insurance at the employer's expense, in accordance with the decisions of the Maritime War Emergency Board, as required for all privately employed seamen. Similarly, they are entitled to war bonus payments under decisions of this Board.

Moreover, Public Law 17 excludes merchant seamen from the operation of the following statutes which ordinarily cover government employees: (1) Civil Service Retirement Act, because as private employees they are covered by the Social Security Act; (2) United States Employees Compensation Act, because as private employees they are covered by the Jones Act, and have the protection of war risk insurance under decisions of the Maritime War Emergency Board; (3) Public Law 490, because the pay and allowances provided in that Act for missing and interned employees of the United States are furnished under the requirements of the Maritime

War Emergency Board; and (4) Public Law 784, providing war casualty compensation and detention payments for contract employees serving outside the United States.

In reporting H. R. 133 to the House of Representatives, the Committee on Merchant Marine and Fisheries said:

> The basic scope and philosophy of the measure is to preserve private rights of seamen while utilizing the merchant marine to the utmost for public wartime benefit.

At the time the War Shipping Administration requisitioned the American Merchant Marine, the great majority of trained and qualified seagoing personnel were members of the various established maritime labor organizations; and most operators were parties to collective bargaining agreements with them. In May, 1942, the War Shipping Administrator signed documents known as the Statements of Policy with all of the principal maritime labor organizations. Under the Statements of Policy the War Shipping Administration agreed that, as steamship operators were appointed as agents of the War Shipping Administration, their customary and usual practices of securing and dealing with seagoing personnel would not be disturbed. It was the purpose and understanding of the Statements of Policy that collective bargaining and collective bargaining procedures and practices, which were established in the industry and which remained established on time chartered vessels after requisition, should be extended and maintained on vessels bareboat chartered to or owned by the War Shipping Administration. The foregoing development is

summarized in the report of the Committee on Merchant Marine and Fisheries to the House of Representatives with respect to H. R. 133, as follows:

> Shortly after the appointment of the Administrator, he adopted a statement of labor policy in which he specifically provided that "the provisions of the existing collective bargaining agreements be continued and observed unless changed by mutual agreement." Accordingly, the seamen employed by the War Shipping Administration through its general agents are entitled to all of the contractual rights of seamen on commercial vessels, including overtime compensation, right to settle disputes through arbitration, special bonuses and penalty provisions, and so forth. By this means, there has been preserved existing labor structures which have been built up in a process of experimentation and evolution, and there has been maintained and utilized for the war effort the experience of responsible organizations and leadership. Although employees of the Government, these seamen are paid by the general agents directly in the same manner as payment is made in commercial operations, the funds for such payments having been lodged in bank accounts maintained by the general agents out of revenues received from the operation or from advances made by the Administrator.

The Committee likewise considered the possibility of amendment of the National Labor Relations Act and in the same report stated:

> Suggestions have been made that the National Labor Relations Act be made appli-

cable to seamen, notwithstanding the fact that seamen employed by the Government would not be entitled to benefits under that Act. The Committee understands that it is the intention of the Administrator of the War Shipping Administration to avail himself of the facilities of the National Labor Relations Board for the purpose of aiding in the maintenance of collective bargaining processes and adjusting problems in such connection when consistent with the prime objective of a vigorous and successful prosecution of the war. Under the Executive Order creating the War Shipping Administration, the Administrator has full authority to avail himself of such services, and in view of the expressed attitude in this connection, it seems unnecessary to consider further suggestions for making the National Labor Relations Act specifically applicable to seamen by Statute.

The Administrator's proposed solution to this problem would appear to assure seamen the substantial benefits of the National Labor Relations Act without infringing upon the well-established principles that the United States as an employer is not subject to the National Labor Relations Act. The Administrator could avoid subjecting disputes or other problems to the National Labor Relations Board in cases where this might interfere with the effective prosecution of his duties and functions. Accordingly, this solution of the problem seems to make legislative action unnecessary.

In view of the foregoing considerations, there appears to be no reason, from the War Shipping Administration standpoint, why the Case at hand should not be disposed of in accordance with the

arrangement established by our exchanges of correspondence, and it is not the desire of the War Shipping Administration that there be any departure from that arrangement.

Sincerely yours,

(Sgd.) E. S. Land,
E. S. LAND,
Administrator.

U. S. GOVERNMENT PRINTING OFFICE: 1946